SUBMISSION TO THE LEGISLATIVE COMMITTEE

ON BILL C-45

THE PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT

BY THE

CANADIAN LABOUR CONGRESS

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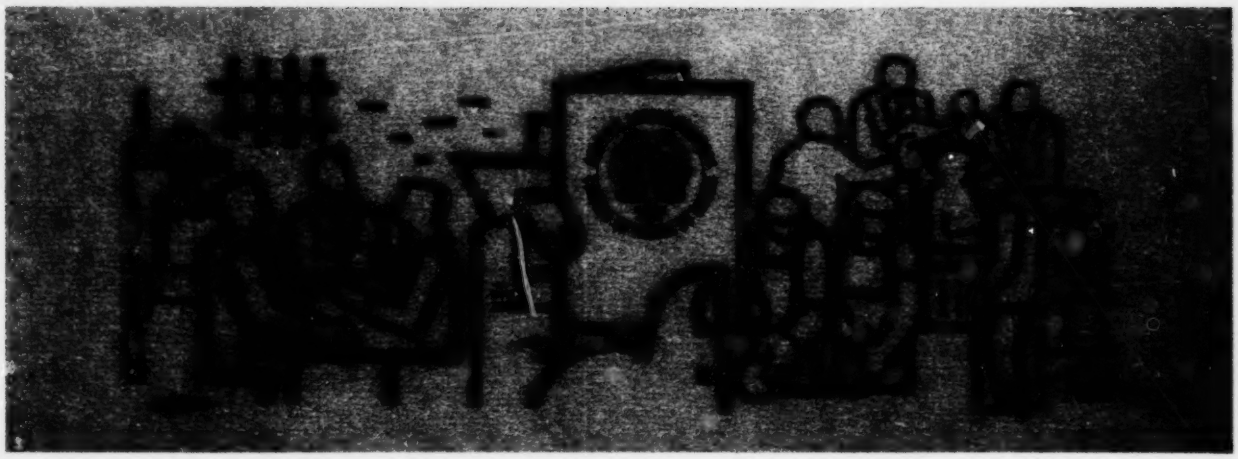

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Mr. Chairman, Members of the Legislative Committee on Bill C-45

The Canadian Labour Congress is a federation of 77 affiliated unions with a membership in excess of 2,000,000. Our membership includes men and women in virtually every sector of the Canadian economy. Given the nature of our organization, we are vitally interested in any legislation that defines the trade union rights of Canadian workers. Bill C-45, the Parliamentary Employment and Staff Relations Act, is no exception to this rule.

Indeed Bill C-45 provides an important test of the attitudes of Parliamentarians toward the trade union rights of Canadians. The workers whose rights are established in this bill are employed by the House of Commons, the Senate, the Library of Parliament, Members of Parliament and the party caucuses. In short, Parliamentarians are defining the trade union rights of their own employees. In doing so, they will reveal with greater clarity than they do elsewhere, their basic attitude toward the trade union rights of all workers. The attitudes that are revealed in C-45 in its current form, are not very reassuring about the attitude of Members of Parliament and the government toward trade union rights.

In appearing before you at this stage of the Committee's hearings we are aware that both the Public Service Alliance of Canada and Local 70390 of the Alliance have appeared before you. We are also aware that both organizations have proposed a number of changes to C-45; indeed the Public Service Alliance has proposed specific wording to amend C-45.

The Canadian Labour congress supports the amendments to Bill C-45 that have been proposed by the Public Service Alliance. And while we will discuss them below (a list of them is attached as Appendix I), we will not dwell on them at length since they have already been presented to you. Rather, we wish to focus on the general attitude toward trade union rights that we would like to see embodied in Bill C-45. We will also draw on our experience in other parts of the public sector and the private sector to comment on some of the restrictions on trade union rights that are included in Bill C-45.

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In turning to Bill C-45 we wish to begin by reminding you of a catalogue of incidents that PSAC Local 70390 appended to their submission to you. The catalogue of incidents included examples of:

- sexual harrassment;
- arbitrary reclassification and salary reductions;
- substantial salary differentials for people doing the same work;
- inconsistency in the requirements for various jobs;
- the appearance of nepotism in awarding jobs; and,
- disregard for the health of Parliament Hill workers.

(The complete catalogue is reproduced in Appendix.)

The injustices that are involved in these incidents are important in and of themselves. They also serve as a reminder of why it is so important that workers have trade union rights. The right to join a trade union and freely negotiate collective agreements involves much more than the potential material benefit of improved wages and working conditions. These rights establish a basis for workers to mutually agree with their employer as to wages and working conditions and they create a framework within which workers become entitled to the due process of law at the work place -- both individually and collectively. Indeed what is so striking about the abuses documented by Local 70390 is that the workers involved had no recourse against the actions taken by their employer precisely because they lacked trade union rights and a collective agreement.

It is no exaggeration to say that we view the right to join a trade union, to negotiate and enforce collective agreements, and to strike in support of collective agreement proposals, as absolutely fundamental in a democratic society.

In its presentation to you the Public Service Alliance of Canada acknowledged that the trade union rights granted to Parliament Hill employees must not interfere with Parliament's ability to conduct its business. In view of Parliament's special role in Canadian society, we agree with this position.

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However, this fact does not diminish the fundamental nature of trade union rights in a democratic society.

In our view, the attitude that should pervade Bill C-45 is that the fullest trade union rights that are compatible with Parliament's right to conduct its business will be granted to the employees of Parliament. This is the spirit that would reflect an appropriate degree of respect for trade union rights. Unfortunately this is not the spirit that pervades Bill C-45. In fact, Bill C-45 limits trade union rights in a number of important respects that have nothing to do with Parliament's ability to conduct its business.

As C-45 currently stands, the trade union rights of Parliamentary employees are unnecessarily restricted in the following key respects:

1. the right to strike is denied to all employees of Parliament;
2. overly restrictive limits are imposed on the matters that are subject to collective bargaining;
3. overly restrictive limits are imposed on the grievance procedure; and,
4. there are unnecessary exclusions for the employees who will acquire the limited trade union rights under Bill C-45.

Each of these limitations will be looked at in turn.

As C-45 is currently written, arbitration is the only recourse open if the parties to the collective bargaining process fail to conclude an agreement in the bargaining process. The right of employees to strike is denied to all employees of Parliament as is the parallel right of the employer to lock-out the employees.

As we have already indicated, we view the right to strike as a fundamental trade union right. The right of workers to withdraw their labour is the only source of real power that workers have in dealing with their employer and it is a right which is enjoyed by most workers in the federal and other labour jurisdictions in Canada.

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We acknowledged above that the right to strike should not be allowed to prevent Parliament from conducting its business. However, there are many people whose rights are being defined by Bill C-45 who would not prevent Parliament from conducting its business even if they did go on strike. For instance, it is difficult to believe that Parliament would be prevented from conducting its business by strike of kitchen and maintenance staff, or by messengers and drivers.

The fact that Parliament is essential and must be allowed to conduct its business does not mean that every employee of Parliament is essential. Yet, Bill C-45 is written as if every employee is essential. This is an unnecessarily restrictive approach to defining the right to strike which is in conflict with the attitude that we believe should pervade the Bill.

We would also remind you that the Public Service Alliance -- in a spirit of positive compromise -- has suggested a method for determining which Parliamentary employees are essential and therefore to be denied the right to strike. (See: Apendix). We would further remind you that employees of both the British and Australian parliaments enjoy the right to strike.

Not only does Bill C-45 deny the right to strike to all employees of Parliament, but it also imposes restrictions on what is negotiable that are unnecessary and inappropriate.

Section 5(3) of Bill C-45 states that:

> Nothing in this Part shall be construed so as to affect the right or authority of an employer to determine the organization of the employer or to assign duties and classify positions of employment.

In defining the scope of arbitral awards, Section 55(2) of the Bill states that:

> No arbitral award shall deal with the standards, procedures, or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or release of employees, or with any term or condition of employment of employees that was not a subject of negotiation between the parties during the period before arbitration was requested in respect thereof.

Several things are striking about these provisions of Bill C-45.

First of all, it is noteworthy that the specific matters that are excluded from arbitral awards and implicitly excluded from collective bargaining are precisely the matters that are at issue in the catalogue of incidents that were prepared by Local 70390 of the Alliance. What is excluded from collective bargaining and arbitral awards is precisely what matters to Parliamentary employees.

Second, the limitation on the scope of bargaining in Section 5(3) is similar to that found in Section 7 of the Public Service Staff Relation Act. However, the implementation of Section 5(3) will not provide the employees of Parliament with the same degree of protection that public employees have with regard to basic issues such as: hiring, firing, promotions and so on. The reason for this is that the scope for arbitrary behaviour in these areas on the part of the government/employer is limited by the provisions of the Public Service Employment Act (P.S.E.A.). The P.S.E.A. is administered at arm's length from the government by the Public Service Commission and it incorporates a grievance procedure that can be used by public employees who feel that the government has not adhered to the provisions of the Act.

Thirdly the limitations that are imposed on the scope of collective bargaining and arbitral awards are limitations that are not faced by most Canadian workers, nor are they limitations that follow from the need to allow Parliament to conduct its business. As we noted above, the need for Parliament to be able to conduct its business should be the only basis on which the trade union rights of Parliamentary employees are limited. We would also point out -- as a practical matter -- that legal limitations on the scope of collective bargaining reduce the opportunities for the parties to the bargaining to engage

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in making trade-offs. Thus they make the bargaining process more difficult, not less difficult.

Finally we would remind you that the Public Service Alliance of Canada proposed amendments that could be made to Sections 5(3) and 55(2) of Bill C-45 that would make these sections of the Bill acceptable.

The grievance procedure as outlined in Section 62(1) of Bill C-45 includes a very wide definition of grievable matters. Grievable matters include not only perceived infringements of collective agreements and arbitral awards but also the provisions of "... a statute, or ... a regulation ..." or "any occurrence or matter affecting his terms and conditions of employment."

Unfortunately, the Bill then proceeds in Section 63 to place very tight limitations on the grievances that can proceed to third party arbitration. Grievances that are subject to third party arbitration are confined to those that involve interpretations of the collective agreement and "... disciplinary action, resulting in discharge, suspension or financial penalty."

Despite the apparent similarity between these provisions of Bill C-45 and the provisions of the PSSRA, they do not result in equal protection for the employees of Parliament. There are two reasons why equal protection does not result. In the first place, the P.S.E.A. establishes protection against arbitrary behaviour by the government/employer and a form of third party adjudication that is not available to employees of Parliament. More importantly, public employees have the right to strike, and to some extent, the possibility, through collective bargaining, of amending those aspects of their collective agreements which are unfavourable or problematic. Offering the employees of Parliament the right to grieve with neither the right to strike nor access to third party adjudication means that there is no source of leverage to make the employers take the grievance seriously.

In addition, the grievance procedure in Bill C-45 makes no provision for union initiated grievances. Thus even if an interpretation of

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"... a statute, or of a regulation ..." or "a provision of a collective agreement or an arbitral award" is perceived as grievable by any number of Parliamentary employees, the union representing the workers cannot initiate a grievance. The grievances will have to be handled individually. If nothing else, the nuisance value of this situation dictates the need to amend this feature of C-45.

Once again the Public Service Alliance has proposed amendments to rectify these problems with the grievance procedure incorporated into Bill C-45. We are struck, once again, by the fact that this limitation on the trade union rights of Parliamentary employees is not required by the need to allow Parliament to conduct its business.

The problems with Bill C-45 that we have noted thus far are very important in their own right. Indeed you have been advised by the Public Service Alliance that to pass Bill C-45 in its current form is worse than not passing it at all. However there is an additional feature of the Bill that stands out as particularly perverse: namely, the deliberate exclusion from the limited trade union rights embodied in C-45 of the staffs of MP's, party leaders, caucus research staff (Section 4(2)) and part-time, temporary and casual employees (Section 3). Not only are these employees denied protection under C-45 itself, but Section 2 of the Bill specifically denies them protection under any other trade union legislation.

It seems remarkable to us that the government or parliamentarians in general would say to their own staff that they cannot enjoy trade union rights even if they want those rights. Yet this is precisely what Bill C-45 does. With regard to the part-time workers, we would remind you that both the former and the current government have made efforts to insure that part-time workers enjoy the same rights and protections in employment as do full-time workers. Thus, for example, recent amendments to the Pension Benefits Standards Act (Bill C-90) included provisions to insure that part-time workers in federal jurisdiction would have access to private pension coverage. To exclude part-time workers from the limited protection provided by C-45 is incredibly out of touch with the concerns expressed elsewhere for this large and growing, and predominantly female section of the labour force.

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In looking beyond the specific provisions of Bill C-45, we are struck by the undeniable desire of a large number of the workers whose rights are being defined by the Bill to enjoy trade union rights. They have been struggling to attain these rights for years. With regard to this specific point we note that Section 18 of Bill C-45 would appear to make 1000 union cards that have already been signed redundant. We would hope that this was unintentional and that Bill C-45 will be amended so that this will not be the result of the adoption of C-45.

We are struck with equal force by the fact that the rights that are to be established for them by Bill C-45 are an emasculated version of the rights that other workers in federal jurisdiction enjoy under the Canada Labour Code. Indeed they do not even match the trade union rights afforded to federal public employees -- as limited as they are -- under the Public Service Staff Relations Act (P.S.S.R.A.). Moreover even if C-45 paralleled the P.S.S.R.A. in all respects, this would still ignore the additional employment protection afforded to federal public employees through the Public Service Employment Act and the ongoing consultative mechanism of the National Joint Council.

From our point of view, the manner in which Members of Parliament deal with the trade union rights of the employees of Parliament will be an acid test of the willingness of MP's to recognize trade union rights. The deliberate attempts to block the certification of Parliamentary employees under the Canada Labour Code does not constitute a good track record. However, the opportunity to reverse the record now presents itself.

We would invite the Committee to review the limitations that Bill C-45 now imposes on the trade union rights of Parliamentary employees with one question in mind: is this limitation absolutely necessary in order to allow Parliament to conduct its business. If the answer is no, then the limitation should be removed.

If such a full scale overhaul of the Bill is impossible, the very least that should be done is to adopt the amendments proposed by the

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Public Service Alliance. This would at least make the Bill acceptable to the people whose rights are at stake.

Respectfully submitted on behalf of the
CANADIAN LABOUR CONGRESS
Shirley G.E. Carr, President
Richard Mercier, Secretary-Treasurer
Dick Martin, Executive Vice-President
Nancy Riche, Executive Vice-President

APPENDIX I

THE EXPERIENCES OF HILL EMPLOYEES

The following are a series of cases drawn from the experience of Hill employees in different services over the past two years. They represent the type of problems which have reinforced the need for collective bargaining rights as a means to resolving workplace issues.

1. In a technical service, a senior position becomes vacant. Several employees inquire about a competition -- none is held. The husband of a manager in another department of the same service is brought in to fill the position on a temporary basis. Several months later a competition is announced. The now experienced husband is hired permanently. The appeal of employees in the service is denied.

2. In a support service, several employees hold working supervisor position on an acting basis. Although they have held these positions for 7, 5, 3 and 2 years respectively they are informed that they have been downgraded four levels and consequently have their salaries dropped from approximately $21,000/year to $17,000/year. During the same period, working supervisors are hired without any competition process in the same service. The internal appeal is dismissed.

3. An older female employee, with close to twenty years seniority in a position, injures her back and is off on long term disability for a couple of months. On returning she is assigned duties which include heavy lifting and carrying although her old position still exists. She is told she should apply for early retirement if not pleased. Her internal grievance is denied.

4. In the printing branch, staff are well aware of a hiring freeze and the fact that some employees have been transferred out to other government departments and offered incentives to take pre-retirement. Nevertheless, new casual staff are hired. At least in one case there is a close family link to the senior branch management.

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5. Employees of the Library of Parliament were denied maternity benefits for a full year after such benefits were finally extended to House of Commons employees. The Library administration states an administrative error was made.

6. Two Library employees work side by side in the same office doing the same jobs with the same responsibilities yet both are classified differently and are at significantly different salary levels. Indexers in the Library of Parliament earn an average of $6,000/year less than people doing the same job for the House of Commons.

7. A technician is hired for a position and is paid below the advertised salary level. It takes the individual a year and a half to reach the salary level advertised in the competition. A year later another technician is hired with the same qualifications and starts at the posted level immediately.

8. Two similar positions are staffed in the space of one year in the Library of Parliament. For the first position, staff is not considered on the basis that they do not meet the qualifications. Less than a year later the second position is opened and staff applications that were refused for the first position are now accepted. Such irregularities have resulted in a high level of frustration with staffing procedures.

9. The Employee Assistance Program at the House of Commons was established to give employees a safety valve, a means of having personal problems dealt with in confidence by a qualified counsellor. Earlier this year the EAP counsellor was fired, the position abolished and the program responsibility turned over to the nurses. An appeal to the Speaker asking that the position be re-established was denied and two petitions signed, by 1,500 Hill employees, ignored.

10. Employees in a technical service are required to attend training courses on their days off, on weekends, without pay. When these employees protested they were told it was mandatory and they had no choice.

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11. In the cafeteria service all job classifications have been revoked. All employees have been informed that they can be assigned any duties although many have held specialized positions for a number of years. Examples are experienced pastry chef and two butchers being assigned to drive food delivery trucks and a pastry chef who was assigned to washing and cutting vegetables. The level of frustration and employee harassment in this service is very high.

12. Employees of the Restaurant and Cafeterias were also recently informed that they would be obligated to work any assigned overtime required yet their overtime would be paid only once every six months. This decision was reversed after intervention and discussion with union members and representatives of Human Resources.

13. In a support service, a female employee is the object of a sexual harassment. Her manager touches her, leans up behind her, rubs against her. When she protests, she is assigned a heavier workload. She was later given a poor performance appraisal and finally transferred to another position.

14. In the cafeteria service an employee cuts their hand on the job. He is told to visit the nurse. The nurse tells him it is not safe to work, he should go home. The manager informs the employee he should go back to work or face discipline.

APPENDIX II

AMENDMENTS TO BILL C-45 PROPOSED BY THE PUBLIC SERVICE ALLIANCE OF CANADA

1. With regard to the right to strike.

The Public Service Alliance has proposed that Bill C-45 be amended to include the right to strike for the employees of Parliament except for employees:

1. agreed to, prior to the commencement of negotiations, by the employer and the Bargaining agent; or,

2. failing mutual agreement, identified by a third party as being essential to allow Parliament to conduct its business.

2. With regard to the scope of collective bargaining, the Public Service Alliance has proposed that Section 5(3) be amended to read as follows:

Section 5(3):

"(a) Subject to the limitations provided in this Act, an employer has the right and authority to determine the organization of the Employer".

(b) The Rights reserved to Management herein are subject to the other provisions of this legislation and must be exercised in a manner consistent with them.

(c) Management shall exercise its rights in a manner that is fair, reasonable and consistent with any collective agreement that it is a party to."

3. With regard to the scope of arbitrable awards, the Public Service Alliance has proposed that Section 55(2) be amended to read as follows:

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Section 55(2)
"No arbitral award shall deal with any term or condition of employment that was not the subject of negotiations between the parties during the period before arbitration was requested in respect thereof."

4. With regard to the scope for third party arbitration of grievances, the Public Service Alliance has proposed that a new section 62(1) be established that would read as follows:

Section 62(1)
"Every collective agreement shall contain a provision for final settlement, without stoppage of work, by adjudication of all differences between the parties to or employees bound by the collective agreement concerning its interpretation, application, administration or alleged violation."

5. With regard to the right of union to initiate a grievance, the Public Service Alliance has recommended that the existing Section 62(1) be renumbered 62(2) and be amended to read as follows:

Section 62(2)
"where a bargaining agent feels itself, or any employee feels himself to be aggrieved
(a) by the interpretation or application in respect of him of
  (i) a provision of a statute, or of a regulation, by-law, direction or other instrument made or issued by the employer, dealing with terms and conditions of employment, or
  (ii) a provision of a collective agreement or arbitral award, or
(b) as a result of any occurrence or matter affecting his terms and conditions of employment, other than a provision described in subparagraph (a)(i) or (ii),

in respect of which no administrative procedure for redress is provided in or under an Act of Parliament, the bargaining agent or the employee is entitled, subject to subsection (3), to present the grievance at each of the levels, up to and including the final level, in the grievance process provided for by this Part."